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10/654,667

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Kenneth Gould

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07/31/2009

The Marbury Law Group, PLLC

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EXAMINER

JAKOVAC, RYAN J

ART UNIT

PAPER NUMBER

2445

MAIL DATE

DELIVERY MODE

07/31/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/654,667

Applicant(s)

GOULD ET AL.

Examiner

RYAN J. JAKOVAC

Art Unit

2445

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-57 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 36-57 is/are rejected.
7) ☒ Claim(s) 36,47 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/CD/CD)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Specification

1. The amendment filed 04/20/2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The Applicant has made amendments directed towards a prompt to override data transfer rules and "the override prompt" which is not supported by the original disclosure (See claims 36, 47). Claim 39-40 recites limitations directed towards time criteria and packet type criteria. Applicant is required to cancel the new matter in the reply to this Office Action.
2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 39-40 recites limitations directed towards time criteria and packet type criteria. These claim terms lack proper antecedent basis in the specification.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 36 and 47 are rejected under 35 U.S.C. 112, second paragraph. Claims 36 and 47 recite the limitation "the override prompt". There is insufficient antecedent basis for this limitation in the claim.

Claim Objections

5. Claim 36 and 47 are objected to because of the following informalities: The claims contain parenthetical expressions. Appropriate correction is required.

Response to Arguments

6. Applicant's arguments with respect to claims 36-57 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 36-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2007/0214083 to Jones et al (hereinafter Jones) in view of US 7,539,748 to Williams.

Regarding claim 36, 47, the combination of Jones and Williams teaches a system for providing data filtering from a cable modem termination system (CMTS) in a cable data network comprising:

the CMTS, wherein the CMTS comprises a packet counter, wherein the packet counter determines a number of packets sent to a subscriber device from the CMTS (herein, "downstream packets") and a number of packets originating from the subscriber device and sent to the CMTS (herein, "upstream packets"), and a data gateway agent (Jones, [0072], the services granted to the subscriber terminal are monitored including counting the number of packets transmitted or received (i.e., upstream and downstream). See Jones fig. 1-2.);

a datastore accessible to the data gateway agent for storing a data transfer rule selected by a subscriber (Jones, [0072], the policy decision point stores rules about the data transfer. A threshold value is used and monitored regarding the subscriber packet transmission. See also, [0035-0036].),

Jones does not expressly disclose wherein the selected data transfer rule comprises filtering criteria selected by the subscriber. However, Williams discloses wherein the selected data transfer rule comprises filtering criteria selected by the subscriber (Williams, col. 5:25-35, subscriber set configuration of control curves.),

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Jones and Williams in order to track and control subscriber bandwidth usage (Williams, col. 5:1-35.).

Jones discloses wherein the gateway agent comprises instructions that cause the CMTS to: receive a packet prior to receipt of the packet by the packet counter; access the data transfer rule stored in the datastore (Jones, [0035-0036], [0072], the subscriber terminal monitors packet count and based on a threshold of data transfer enacts rules regarding the subscriber.);

Williams discloses use the filtering criteria to determine whether the packet violates the data transfer rule; forward the packet to the packet counter for counting when the packet does not violate the data transfer rule (Williams, col. 5-6, col. 7:10-25, packet counting and data transfer in accordance with bandwidth monitoring and control of data transfer. See col. 8:15-30, 60-67, col. 9-10, bandwidth control limits.);

send the subscriber device a notification message when the packet violates the data transfer rule (Williams, col. 5-6, alarm message transmitted to subscriber when controls are exceeded.); receive a response from the subscriber device to the override prompt (Williams, col. 12:1-27, when accumulation exceeds control curve lower QoS is requested. QoS bandwidth control limiting. See also, col. 11:1-20, master user modifies group priority. See also, col. 13:1-27.); discard the packet when the response to the override prompt is to not override the data transfer rule; and forward the packet to the packet counter for counting when the response to the override prompt is to override the data transfer rule (Williams, see at least col. 8:1-55, data transfer is blocked or allowed in accordance with bandwidth control measures.).

Williams does not expressly disclose wherein the notification message comprises a prompt to override the data transfer rule. However, Williams, as described above, discloses alarm messages indicating the traverse of bandwidth control rules and subsequent methods to adjust data transfer rules. An override prompt as claimed would have been obvious to one of ordinary skill in the art at the time of the invention since it amounts to mere variation of the systems and methods as disclosed by the combination of Jones and Williams and/or amounts to applying a known technique to a known device to yield predictable results. See MPEP § 2141.

Regarding claim 37, 48, the combination of Jones and Williams teaches the system of claim 36, wherein the filtering criteria comprise content criteria and the instruction to use the filtering criteria to determine whether the packet violates the data transfer rule comprises determining whether the packet comprises the content criteria (Williams, col. 9-10, data filtered by category and content.).

Regarding claim 38, 49, the combination of Jones and Williams teaches the system of claim 37, The combination of Jones and Williams does not expressly disclose wherein the packet is an upstream packet and the content criteria are selected from the group consisting of subscriber personal information, a telephone number, a social security number, a driver's license number, a credit card number, and location information.

However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the descriptive material does not patentably distinguish the claimed invention.

Regarding claim 39, 50, the combination of Jones and Williams teaches the system of claim 36, wherein the filtering criteria comprise time criteria and wherein the instruction to use the filtering criteria to determine whether the packet violates the data transfer rule comprises determining whether the packet is received at the CMTS during a preset time period (Williams, col. 5:1-35, time based bandwidth limiting. See also, col. 9-10, control curve incremented according to billing cycles. See also table 3, peak time criteria.).

Regarding claim 40, 51, the combination of Jones and Williams teaches the system of claim 36, wherein the filtering criteria comprise time criteria and packet type criteria (Williams, col. 5:1-35, time based bandwidth limiting. See also, col. 9-10, control curve incremented according to billing cycles. See also table 3, peak time criteria. Table 2 indicates packet type criteria.) and wherein the instruction to use the filtering criteria to determine whether the packet violates the data transfer rule comprises determining whether the packet is a packet of a particular type that is received at the CMTS during a preset time period (Williams, col. 8-10, data transfer in accordance with bandwidth priorities. Bandwidth priority configurations include peak time priorities and data type priority. See tables 1-4.).

Regarding claim 41, 52, the combination of Jones and Williams teaches the system of claim 36, wherein the filtering criteria comprise protocol criteria and the instruction to use the filtering criteria to determine whether the packet violates the data transfer rule comprises determining whether the packet received at the CMTS uses a particular protocol (Williams, col. 9-10.).

Regarding claim 42, 53, the combination of Jones and Williams teaches the system of claim 36, wherein the gateway agent further comprises instructions that cause the CMTS to:

receive an upstream packet (Williams, col. 1:5-35.);

create an entry in a connection database, wherein the entry in the connection database comprises an upstream packet identifier that identifies the upstream packet as originating from the subscriber device (Williams, col. 5:55-6:67, tracking, monitoring, and logging of data packets.); and

receive a downstream packet, wherein the filtering criteria comprises the upstream packet identifier, and wherein the instruction to use the filtering criteria to determine whether the packet violates the data transfer rule comprises determining whether the downstream packet comprises the upstream packet identifier. (Williams, col. 5:55 to col. 6:67, both inbound and outbound (i.e. upstream and downstream) data packets are monitored, tracked, and logged and used to determine whether data packets violate control curve points. See also col. 8-10.).

Regarding claim 43-46, 54-57, the combination of Jones and Williams teaches the system of claim 36, wherein the CMTS further comprises a billing agent and wherein the billing agent is configured to receive a subscriber count trigger and to transmit a count message to the subscriber comprising a current packet count upon the receipt of the subscriber count trigger (Williams, col. 6:1-55. See also, col. 3:5-35, col. 7:12-50.).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003. The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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